

EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
CISCO SYSTEMS, INC.,
Plaintiff,
vs. Civil Action No.
5:14-cv-5344-BLF
ARISTA NETWORKS, INC.,
Defendants.

_____/

VIDEO RECORDED DEPOSITION OF EXPERT

DOUGLAS W. CLARK, Ph.D.

JULY 6, 2016

9:07 A.M.

50 California Street, 21st Floor

San Francisco, California

REPORTED BY:
Mark W. Banta
CSR No. 6034, CRR

July 06, 2016

2 to 5

<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF CALIFORNIA</p> <p>3 SAN JOSE DIVISION</p> <p>4</p> <p>5 CISCO SYSTEMS, INC.,</p> <p>6</p> <p>7 Plaintiff,</p> <p>8 vs. Civil Action No.</p> <p>9 ARISTA NETWORKS, INC., 5:14-cv-5344-BLF</p> <p>10 Defendants.</p> <p>11 _____ /</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Videotaped Deposition of DOUGLAS W. CLARK,</p> <p>16 Ph.D., taken on behalf of the Plaintiff, at</p> <p>17 Quinn, Emanuel, Urquhart, & Sullivan, 50 California</p> <p>18 Street, 21st Floor, San Francisco, California, beginning</p> <p>19 at 9:07 A.M. and ending at 4:01 P.M., on Wednesday, the</p> <p>20 6th day of July, 2016, before Mark W. Banta, RPR, CRR,</p> <p>21 California Certified Shorthand Reporter, CSR No. 6034.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXAMINATION</p> <p>2</p> <p>3 WITNESS: DOUGLAS W. CLARK, Ph.D.</p> <p>4 EXAMINATION BY: PAGE</p> <p>5 BY MR. JAFFE 7</p> <p>6 BY MR. ROSEN 150</p> <p>7 BY MR. JAFFE 156</p> <p>8</p> <p>9 INSTRUCTIONS TO WITNESS</p> <p>10 PAGE LINE</p> <p>11 17 20</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2 For the Plaintiff:</p> <p>3 QUINN EMANUEL URQUHART & SULLIVAN, LLP</p> <p>4 BY JORDAN JAFFE</p> <p>5 50 California Street, 22nd Floor</p> <p>6 San Francisco, California 94111</p> <p>7 415.875.6600</p> <p>8 jordanjaffe@quinnemanuel.com</p> <p>9</p> <p>10 For the Defendant ARISTA NETWORKS, INC.:</p> <p>11 KEKER & VAN NEST, L.L.P.</p> <p>12 BY DAVID ROSEN</p> <p>13 BY AJAY KRISHNAN</p> <p>14 633 Battery Street</p> <p>15 San Francisco, California 94111-1809</p> <p>16 415.676.2261</p> <p>17 drosen@kvn.com</p> <p>18 akrishnan@kvn.com</p> <p>19</p> <p>20 ALSO PRESENT: KYLE DEETKEN, Videographer</p> <p>21 SI SHEN, Quinn Emanuel summer associate</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX TO EXHIBITS</p> <p>2 EXPERT</p> <p>3 DOUGLAS W. CLARK, Ph.D.</p> <p>4 Cisco Systems, Inc. v. Arista Networks, Inc.</p> <p>5 July 6, 2016</p> <p>6 Mark W. Banta, CSR No. 6034, CRR</p> <p>7</p> <p>8 MARKED DESCRIPTION PAGE</p> <p>9</p> <p>10 Exhibit 3001 Opening Expert Report of Douglas W. 13</p> <p>11 Clark Regarding Invalidity of U.S.</p> <p>12 Patent No. 7,047,526</p> <p>13 Exhibit 3002 Blank page 52</p> <p>14 Exhibit 1371 U.S. Patent 7,047,526 53</p> <p>15 Exhibit 3003 Order Constructing Claims in U.S. 60</p> <p>16 Patent No. 7,047,526</p> <p>17</p> <p>18 Exhibit 3004 Diagram of portion of modified 69</p> <p>19 command parse tree</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 6</p> <p>1 SAN FRANCISCO, CALIFORNIA</p> <p>2 WEDNESDAY, JULY 6, 2016, 9:07 A.M.</p> <p>3 PROCEEDINGS</p> <p>4 THE VIDEOGRAPHER: All right. Good morning. We</p> <p>5 are on the record. This is the recorded video deposition</p> <p>6 of Doug Clark in the matter of Cisco verse Arista in the</p> <p>7 United States District Court, Northern District of</p> <p>8 California, San Jose Division, case number</p> <p>9 5:14-CV-5344-BLF, taken on behalf of the plaintiff.</p> <p>10 This deposition is taking place at 50 California</p> <p>11 Street, 22nd Floor, San Francisco, California on</p> <p>12 July 6th, 2016, at 9:08 a.m.</p> <p>13 My name is Kyle Deetken. I am the videographer</p> <p>14 with U.S. Legal Support, located at 44 Montgomery Street,</p> <p>15 Suite 550, San Francisco, California.</p> <p>16 Video and audio recording will be taking place</p> <p>17 unless all counsel have agreed to go off the record.</p> <p>18 Would all present please introduce themselves,</p> <p>19 beginning with the witness.</p> <p>20 THE WITNESS: I'm Douglas Clark.</p> <p>21 MR. ROSEN: David Rosen of Kecker & Van Nest for</p> <p>22 defendant Arista and for the witness.</p> <p>23 MR. KRISHNAN: Ajay Krishnan, Kecker & Van Nest,</p> <p>24 for Arista.</p> <p>25 MR. JAFFE: Jordan Jaffe of Quinn Emanuel on</p>	<p style="text-align: right;">Page 8</p> <p>1 Here's very unlikely event. Through about four</p> <p>2 miracles of technology I can see my blood sugar on my</p> <p>3 iWatch, so I will occasionally -- no, not occasionally, I</p> <p>4 will more frequently than you might think normal for a</p> <p>5 watch be looking at it, so the video will capture me</p> <p>6 doing that, and that's what I'm doing. I'm not checking</p> <p>7 my tweets, I don't know how to tweet, but I'm just</p> <p>8 checking my blood sugar.</p> <p>9 Q. Does your diabetes diagnosis affect your ability</p> <p>10 to truthfully testify today?</p> <p>11 A. No.</p> <p>12 Q. Is there anything else that we should be aware</p> <p>13 of that would affect your ability to testify fully and</p> <p>14 accurately today?</p> <p>15 A. No.</p> <p>16 Q. And to be clear, you're diabetes diagnosis will</p> <p>17 not affect your ability to testify fully and accurately,</p> <p>18 correct?</p> <p>19 A. Except for that extremely rare problem of low</p> <p>20 blood sugar where there -- there are cognitive things</p> <p>21 that happen, but that is essentially a zero probability.</p> <p>22 Q. Okay. Do you understand that you're under oath,</p> <p>23 sir?</p> <p>24 A. Yes.</p> <p>25 Q. Do you understand that, even though we are not</p>
<p style="text-align: right;">Page 7</p> <p>1 behalf of the plaintiff Cisco, and with me today is one</p> <p>2 of our summer associates, Si Shen.</p> <p>3 THE VIDEOGRAPHER: The certified court reporter</p> <p>4 is Mark Banta. Would you please swear in the witness.</p> <p>5 DOUGLAS W. CLARK, Ph.D.,</p> <p>6 Having stated that he would testify the truth,</p> <p>7 the whole truth, and nothing but the truth, testified as</p> <p>8 follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. JAFFE:</p> <p>11 Q. Good morning, Dr. Clark.</p> <p>12 A. Good morning.</p> <p>13 Q. Before we get started, your counsel had raised</p> <p>14 that you're on some medication relating to diabetes, and</p> <p>15 I wanted to give you an opportunity to address that on</p> <p>16 the record.</p> <p>17 A. I've had Type 1 diabetes since the second</p> <p>18 Eisenhower administration. I take insulin. It makes the</p> <p>19 blood sugar go up, makes the blood sugar go down,</p> <p>20 sometimes it goes up. There's a tiny, tiny chance that</p> <p>21 when it goes down too much I will want a break somewhat</p> <p>22 urgently. That has never happened but -- in the</p> <p>23 deposition, but it's not a zero probability, so I wanted</p> <p>24 to alert you about that. So that's a very unlikely</p> <p>25 event.</p>	<p style="text-align: right;">Page 9</p> <p>1 sitting in a courtroom today, you should testify with the</p> <p>2 same seriousness as if we were?</p> <p>3 A. Yes.</p> <p>4 Q. How many depositions have you been involved in?</p> <p>5 A. Twelve.</p> <p>6 Q. Were those all in an expert capacity?</p> <p>7 A. I think so, but I'm -- I'm not quite sure what</p> <p>8 you mean.</p> <p>9 Q. Sure. So were there any of the depositions that</p> <p>10 you were involved in where you weren't testifying on</p> <p>11 behalf of one party or another but rather as a fact</p> <p>12 witness or a party or something like that?</p> <p>13 A. I believe not.</p> <p>14 Q. Okay. So you've had 12 depositions. So I'm not</p> <p>15 going to go over the back and forth, as you're a bit of a</p> <p>16 veteran at this, but I will just reiterate if you can</p> <p>17 please let me finish my question and I'll do the best to</p> <p>18 let you finish your answer so that the court reporter can</p> <p>19 have a clean record of what we say. Is that all right?</p> <p>20 A. I understand.</p> <p>21 Q. Okay. In your prior work, how many times have</p> <p>22 you opined as an expert that a patent is invalid?</p> <p>23 A. Do you mean in deposition?</p> <p>24 Q. I mean anywhere in recorded form, whether it be</p> <p>25 a report, a deposition, a trial.</p>

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<p style="text-align: right;">Page 10</p> <p>1 A. I do not know exactly. I would guess -- report, 2 deposition, trial -- six-ish, plus or minus. If I had my 3 list I could figure out, but... 4 Q. How many times have you opined that a patent was 5 valid? 6 A. I want to say less than six, but not much. 7 Again, just guessing. 8 Q. So would that number be the same for questions 9 of infringement and non-infringement, or would the answer 10 be different? 11 A. So I have done work where I only argued 12 non-infringement and not invalidity. I'd have to look at 13 my list. 14 Q. Have you ever opined that a patent was infringed 15 and valid? 16 A. Infringed and valid? Yes. 17 Q. When was the last time you did that? 18 A. At least 2007, and there might be one or more 19 after that, but the one that sticks in the mind is 2007. 20 Q. You've submitted two expert reports in this 21 case, correct? 22 A. Yes. 23 Q. Are you currently preparing any supplemental 24 reports? 25 A. I beg your pardon. I am not.</p>	<p style="text-align: right;">Page 12</p> <p>1 BY MR. JAFFE: 2 Q. Putting aside the claim construction issue which 3 we'll come back to in one second, apart from that issue, 4 do your reports express your full and correct opinions 5 that you expect -- expect to address at trial? 6 A. Yes. 7 Q. Are there any errors that you're aware of in 8 your reports, sitting here today, that you want to 9 correct? 10 A. I'm aware of a handful of insignificant typos, 11 but nothing substantial. 12 Q. There's a binder sitting in front of you that 13 has "Dr. Clark" in a nice label on it. What is that? 14 A. That's a binder that Arista's attorneys prepared 15 for me containing my report and some other things. 16 Q. Does that have your CV and list of cases in it? 17 A. It has my CV, but I think it does not have my 18 list of cases. Let me see. 19 It does not have the list of cases. 20 Q. Okay. So you have your invalidity report 21 sitting in front of you, right? 22 A. I do. 23 MR. JAFFE: Okay. Why don't we go ahead and 24 mark that as an exhibit. 25 And I think this will be Exhibit -- do you know</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Do your reports express your full and correct 2 expert opinions that you expect to express at trial? 3 A. The first one, the big one, suffers from having 4 been submitted before the Court's claim construction 5 order, so I would expect to modify some opinions based on 6 that order. 7 Q. What do you mean, you would expect to modify? 8 A. Well, I would -- I would expect to testify at 9 trial using the Court's claim constructions and not some 10 other claim constructions. 11 Q. But you haven't put forth any report that 12 applies the Court's claim constructions for purposes of 13 your invalidity analysis; true? 14 MR. ROSEN: Objection. Vague. 15 THE WITNESS: The -- the little report was after 16 the claim construction order, so that did respond to 17 the... 18 BY MR. JAFFE: 19 Q. Right. And so my question was a little more 20 specific, which is: You haven't put forth any report 21 that applies the Court's claim construction for purposes 22 of your invalidity analysis? 23 A. That's correct. 24 MR. ROSEN: Objection. Vague. 25 //</p>	<p style="text-align: right;">Page 13</p> <p>1 what exhibit? 2 THE REPORTER: No. 3 MR. JAFFE: No? I was hoping for a shortcut. 4 So we'll make this 3001. I'm pretty sure it was marked 5 before. 6 (Exhibit 3001 marked.) 7 BY MR. JAFFE: 8 Q. Dr. Clark, can you please take a look at what 9 I've now marked as Exhibit 3001 and let me know if you 10 recognize it. 11 A. That appears to be my expert report on 12 invalidity with Exhibits A, B, C, D and E. 13 Q. Now that we have your expert -- opening expert 14 report on invalidity in front of us, this expert report 15 contains all your opinions on invalidity that you're 16 prepared to discuss today, correct? 17 A. No -- 18 MR. ROSEN: Objection. Vague. 19 THE WITNESS: No, because I'm prepared to 20 discuss the -- I'm prepared to offer opinions that are 21 informed by the Court's claim construction. 22 BY MR. JAFFE: 23 Q. What report are those opinions expressed in? 24 A. They are not expressed in any report. 25 Q. So am I correct in understanding that you have</p>

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<p style="text-align: right;">Page 14</p> <p>1 some opinions on invalidity applying the Court's claim 2 construction that are not expressed in any report, but 3 you want to talk about them today and intend to express 4 them at some later date? 5 MR. ROSEN: Objection. Misstates testimony. 6 Vague. 7 THE WITNESS: My understanding is that that's -- 8 that is my obligation at trial to provide opinions that 9 don't use some other claim construction than the Court's, 10 and I was -- because of the schedule, I was -- I 11 submitted this before the Court's claim construction 12 order, so I don't know what else to do. 13 BY MR. JAFFE: 14 Q. You submitted a rebuttal report -- report that 15 applied the Court's claim construction, right? 16 A. Yes. 17 Q. And in that report did you address your 18 invalidity analysis? 19 MR. ROSEN: Objection. Vague. 20 THE WITNESS: No. 21 BY MR. JAFFE: 22 Q. Why not? 23 A. I was not asked to. 24 Q. When do you expect to put forth a report that 25 expresses your opinions applying the Court's claim</p>	<p style="text-align: right;">Page 16</p> <p>1 have put forth in the report. Now, for purposes of my 2 next few questions, I want to talk about the opinions as 3 expressed in your report. Do you understand me? 4 A. I do. 5 Q. Okay. Under the opinions expressed in your only 6 expert report that relates to validity, you have no 7 opinion that any prior art reference invalidates any 8 asserted claim of the '526 patent under the Court's 9 constructions, correct? 10 MR. ROSEN: Objection. Compound. Vague. 11 THE WITNESS: I think that is right. 12 BY MR. JAFFE: 13 Q. Now let's take a look at your report. How much 14 time did you spend preparing your report? And I'm 15 referring to Exhibit 3001. 16 A. Do you mean -- let's see, what do you mean 17 exactly, "prepare"? 18 Q. I mean prepare the report, from Arista's counsel 19 engaging you until that document was produced in this 20 litigation. 21 MR. ROSEN: Objection. Vague. 22 THE WITNESS: I would estimate 150 hours. 23 BY MR. JAFFE: 24 Q. How many hours did you spend preparing your 25 rebuttal report?</p>
<p style="text-align: right;">Page 15</p> <p>1 construction -- 2 MR. ROSEN: Objection. Vague. 3 MR. JAFFE: Sorry. I'm not done with my 4 question. 5 Q. On validity. 6 A. I will prepare any report I'm asked to prepare, 7 but I have not been asked and I am not working on one 8 now. 9 Q. If I wanted to understand the scope of your 10 opinions, before I sat down to today's deposition, on 11 invalidity, applying the Court's claim construction, how 12 would I have done that? 13 MR. ROSEN: Objection. Vague. Misstates law. 14 THE WITNESS: Would you ask again? 15 BY MR. JAFFE: 16 Q. Sure. My question is: If I wanted to 17 understand what your opinions were on invalidity applying 18 the Court's claim construction before I sat down to 19 today's deposition, how would I be able to do that? 20 MR. ROSEN: Same objections. 21 THE WITNESS: You would not be. 22 BY MR. JAFFE: 23 Q. I would not be able to do that? 24 A. You would not be able to do that. 25 Q. Okay. Let's talk about the opinions that you</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I would guess 10. 2 Q. How many hours did you spend preparing for 3 today's deposition? 4 A. I spent all of yesterday, half of July 4th with 5 the attorneys, and prepared by myself for the previous 6 couple of weeks. I -- probably 20-ish hours. 7 Q. We've talked about the amount of time that you 8 spent preparing your opening report, your rebuttal 9 report, and preparing for today's deposition which, based 10 on my elementary school arithmetic, totals up to about 11 180 hours. Is that the correct amount of time that you 12 have spent working on this matter, approximately? 13 A. Yes. 14 Q. Looking at your opening report, in terms of the 15 drafting process, who put fingers to keyboard in creating 16 it? Was it something that you wrote or was it something 17 that there was a draft that was exchanged? And I don't 18 want the content of any drafts, I'm just wondering about 19 the general process. 20 MR. ROSEN: Objection; compound. Objection; 21 vague. And I'm also going to object and instruct the 22 witness not to divulge any conversations with counsel. 23 THE WITNESS: It was an exchange of drafts, I 24 would say a vigorous exchange of drafts with many -- 25 with -- ask your question again, please.</p>

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<p style="text-align: right;">Page 62</p> <p>1 MR. ROSEN: Objection. Vague. Asked and</p> <p>2 answered. Calls for a narrative.</p> <p>3 THE WITNESS: So the -- meaning -- we're just</p> <p>4 talking about this limitation about elements here. The</p> <p>5 middle of the validating element?</p> <p>6 MR. JAFFE: Yes.</p> <p>7 THE WITNESS: So my understanding comes from</p> <p>8 reading the claim, reading the specification, examining</p> <p>9 the figure, figuring out how the algorithm works, and my</p> <p>10 understanding comports with this restriction that an</p> <p>11 element has at least one pair of command -- command</p> <p>12 component and action -- command action value.</p> <p>13 BY MR. JAFFE:</p> <p>14 Q. What is that understanding?</p> <p>15 MR. ROSEN: Objection. Vague. Asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: I feel like I'm going to say the</p> <p>18 same thing again. To be an element, you have to have at</p> <p>19 least one command component and a matching -- a</p> <p>20 corresponding command action value, and you can have more</p> <p>21 of those if you like.</p> <p>22 BY MR. JAFFE:</p> <p>23 Q. So if I'm understanding you correctly, other</p> <p>24 than reading the claim language or the Court's</p> <p>25 construction to me, you don't have any other</p>	<p style="text-align: right;">Page 64</p> <p>1 construed by the Court, is your understanding that there</p> <p>2 needs to be at least one command action value for each</p> <p>3 generic command component?</p> <p>4 A. Yes. That is the Court's construction.</p> <p>5 Q. And your understanding is if you add a second</p> <p>6 generic command and that generic command has an</p> <p>7 associated command action value that is the same as</p> <p>8 another generic command component, does that still meet</p> <p>9 the limitations of claim 1?</p> <p>10 MR. ROSEN: Objection. Incomplete hypothetical.</p> <p>11 Compound. Vague.</p> <p>12 THE WITNESS: I think you didn't say quite what</p> <p>13 you meant.</p> <p>14 You said add a command that's the same as a</p> <p>15 component?</p> <p>16 BY MR. JAFFE:</p> <p>17 Q. Sure. Why don't we do this in the context of</p> <p>18 Figure 2. Dr. Clark, looking at Figure 2, if I were to</p> <p>19 remove one of the listed command keys from element 24b</p> <p>20 such that token 6 and token 7 were both associated with</p> <p>21 command key 4, would that element still meet the</p> <p>22 limitations of claim 1 under the Court's construction?</p> <p>23 MR. ROSEN: Same objections.</p> <p>24 THE WITNESS: So let -- let me change your</p> <p>25 hypothetical a little.</p>
<p style="text-align: right;">Page 63</p> <p>1 understanding of the having elements limitation of claim</p> <p>2 1 that you can provide to me today. Is that fair?</p> <p>3 MR. ROSEN: Objection. Vague. Misstates prior</p> <p>4 testimony. Asked and answered.</p> <p>5 THE WITNESS: I -- I'm somewhat baffled by the</p> <p>6 question for what other understanding -- where would some</p> <p>7 other understanding come from other than the patent and</p> <p>8 the -- and the constructions?</p> <p>9 BY MR. JAFFE:</p> <p>10 Q. Well, let me ask it this way: You've said you</p> <p>11 have an understanding of what this limitation means from</p> <p>12 the specification. Is that right?</p> <p>13 A. From the claim language and the -- and the</p> <p>14 specification.</p> <p>15 Q. Okay.</p> <p>16 A. In view of the construction.</p> <p>17 Q. What in the specification are you using to</p> <p>18 conform your understanding about claim 1?</p> <p>19 MR. ROSEN: Objection. Vague.</p> <p>20 THE WITNESS: I would say generally from column</p> <p>21 3, line 36 to column 4, line 53. And there may be other</p> <p>22 places, but I think that's the main one. And then, of</p> <p>23 course, the figure itself.</p> <p>24 BY MR. JAFFE:</p> <p>25 Q. If I look at claim 1 of the '526 patent as</p>	<p style="text-align: right;">Page 65</p> <p>1 So if you just took the -- in 20 -- looking at</p> <p>2 24b, you're saying what if the two command components had</p> <p>3 the same command action value. Is that where you're...</p> <p>4 where you want to be?</p> <p>5 BY MR. JAFFE:</p> <p>6 Q. They were both associated with one command key,</p> <p>7 yes.</p> <p>8 A. So a way to do that would be to change the 2 in</p> <p>9 box 30d into a 4, and then the component 6 which is tcp</p> <p>10 would have the same command action value as component 7</p> <p>11 which is udp.</p> <p>12 Q. Okay. But what about the question that I asked</p> <p>13 you, which is if I removed one of the command keys and</p> <p>14 there were two generic command components associated with</p> <p>15 one command action value, would that meet the limitations</p> <p>16 of claim 1 under the Court's claim construction?</p> <p>17 MR. ROSEN: Objection. Vague. Incomplete</p> <p>18 hypothetical. Compound. Asked and answered.</p> <p>19 THE WITNESS: Well, so I think -- I'm not sure</p> <p>20 what you're getting at. But if you -- if you removed</p> <p>21 wholesale the one command key and its -- the box -- if</p> <p>22 you remove the command key and the -- and the token in</p> <p>23 30e, so you had one box with a generic command component</p> <p>24 and a corresponding command action value and one box only</p> <p>25 with a generic command component and no command action</p>

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<p style="text-align: right;">Page 66</p> <p>1 value, that would not meet the limitation.</p> <p>2 BY MR. JAFFE:</p> <p>3 Q. Even though the generic command components are</p> <p>4 both associated with one command action value?</p> <p>5 A. I don't --</p> <p>6 MR. ROSEN: Objection. Vague. Assumes facts.</p> <p>7 Argumentative.</p> <p>8 THE WITNESS: I don't --</p> <p>9 MR. ROSEN: Asked and answered.</p> <p>10 THE WITNESS: If you removed the command action</p> <p>11 value, I don't know how you would accomplish the</p> <p>12 association. I proposed a way, just change the number to</p> <p>13 be the same number, but...</p> <p>14 BY MR. JAFFE:</p> <p>15 Q. I see what you're saying. The only way, in your</p> <p>16 opinion, to have an associated command action value is to</p> <p>17 have these pairs that are discussed here, right?</p> <p>18 MR. ROSEN: Objection. Misstates prior</p> <p>19 testimony. Vague. Incomplete hypothetical.</p> <p>20 THE WITNESS: No. This is -- this is a picture</p> <p>21 of an association. How that's accomplished is a matter</p> <p>22 of implementation.</p> <p>23 BY MR. JAFFE:</p> <p>24 Q. How else could I implement having two generic</p> <p>25 command components and one command action value that</p>	<p style="text-align: right;">Page 68</p> <p>1 BY MR. JAFFE:</p> <p>2 Q. With both?</p> <p>3 A. With both.</p> <p>4 Q. Yes.</p> <p>5 A. You could -- you could draw a picture that had a</p> <p>6 little arrow inside the element, a pointer from the</p> <p>7 generic command component to the command action value.</p> <p>8 That would be the equivalent of having two copies.</p> <p>9 Q. What if I had an arrow from the generic command</p> <p>10 component that went to the next generic command component</p> <p>11 and then went to the command action value?</p> <p>12 MR. ROSEN: Objection. Vague. Incomplete</p> <p>13 hypothetical.</p> <p>14 THE WITNESS: What would that mean?</p> <p>15 BY MR. JAFFE:</p> <p>16 Q. Sure. Why don't -- seeing as every other</p> <p>17 deponent has drawn something, why don't I draw something</p> <p>18 and we'll talk about it.</p> <p>19 A. All right.</p> <p>20 MR. JAFFE: Let's make this Exhibit 3000 -- I</p> <p>21 think we're on 3?</p> <p>22 THE REPORTER: Four.</p> <p>23 MR. JAFFE: Four. Let me hand this -- I'm going</p> <p>24 to hand this to opposing counsel before I hand it to you</p> <p>25 guys -- to the witness, so you'll have an opportunity to</p>
<p style="text-align: right;">Page 67</p> <p>1 would be different from what's shown in Figure 2 then?</p> <p>2 MR. ROSEN: Objection. Incomplete hypothetical.</p> <p>3 Vague. Calls for a narrative.</p> <p>4 THE WITNESS: So if you wished for the same</p> <p>5 command action value to be attached to two different</p> <p>6 generic command components in the same element, you'd</p> <p>7 just, in this picture, just write the same number in the</p> <p>8 box under CK. As I said before, the same -- if you</p> <p>9 wanted both -- both to do command action value 2, you'd</p> <p>10 write the 2 over the 4 which is labeled 32.</p> <p>11 BY MR. JAFFE:</p> <p>12 Q. Is there any other way to do that?</p> <p>13 MR. ROSEN: Objection. Asked and answered.</p> <p>14 Vague. Incomplete hypothetical.</p> <p>15 THE WITNESS: Sure.</p> <p>16 BY MR. JAFFE:</p> <p>17 Q. What's an example of another way that I could</p> <p>18 have two generic command components and one associated</p> <p>19 command action value in one element of a command parse</p> <p>20 tree?</p> <p>21 A. One --</p> <p>22 MR. ROSEN: Excuse me. Same objections.</p> <p>23 THE WITNESS: One action value associated with</p> <p>24 each.</p> <p>25 //</p>	<p style="text-align: right;">Page 69</p> <p>1 look at it. And if you don't mind, Dr. Clark, handing</p> <p>2 that to the court reporter so that he can mark it as an</p> <p>3 exhibit.</p> <p>4 (Exhibit 3004 marked.)</p> <p>5 BY MR. JAFFE:</p> <p>6 Q. Dr. Clark, I have handed you something that I</p> <p>7 just drew, and I apologize for my handwriting in advance</p> <p>8 and my drawing skills.</p> <p>9 What I'd like you to consider is this modified</p> <p>10 version of part of the command parse tree in Figure 2.</p> <p>11 Do you understand what this is depicting with that</p> <p>12 explanation, or no?</p> <p>13 MR. ROSEN: I'll object that the diagram</p> <p>14 represents an incomplete hypothetical and is vague.</p> <p>15 THE WITNESS: I beg your pardon. I don't</p> <p>16 completely understand how this -- what this represents.</p> <p>17 BY MR. JAFFE:</p> <p>18 Q. So what this is intended to represent is one</p> <p>19 element of a command parse tree modified from what's in</p> <p>20 Figure 2. And in particular, do you see that udp</p> <p>21 course -- is listed as corresponding to token 6 in Figure</p> <p>22 2?</p> <p>23 MR. ROSEN: Objection. Vague.</p> <p>24 THE WITNESS: I think that's 7, but...</p> <p>25 //</p>

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1 BY MR. JAFFE:

2 Q. Oh, excuse me. tcp.

3 A. tcp is 6.

4 Q. And then udp is 7?

5 A. Yes.

6 Q. And then do you see in element 24b that we've
7 been discussing, there's similarly 6 and 7?

8 A. Yes.

9 Q. So what I've attempted to depict is those
10 strings included within an element within Figure 2.

11 A. Yes.

12 Q. So with that further explanation, do you
13 understand what is being depicted in this drawing that
14 I've created?

15 A. No.

16 Q. Okay. What is still -- do you have any
17 questions about that maybe I can help with?18 A. Is the -- is the dot labeled with "reference,"
19 "return" or -- what is that (indicating)?20 Q. Sure. So do you remember -- I see. Do you
21 remember when we were discussing earlier an
22 object-oriented implementation of what's in Figure 2?

23 A. Yes.

24 Q. And you said that there could be a reference
25 within the object to a function and that would correspond

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1 to a command action value?

2 A. Yes.

3 Q. Okay. Now, that's what I was attempting to
4 depict.

5 A. All right.

6 Q. So with that understanding, do you understand
7 that the reference and function line there in the drawing
8 as 3004?9 A. So I'm inferring that you meant this to be
10 directional, going from left to right. The reference
11 points to the function?

12 Q. Yes.

13 A. Not the other way.

14 Q. Yes. And you can an -- feel free to annotate it
15 if you'd like.16 A. Then it would be another figure, another --
17 another exhibit.18 So you intend the reference to be a pointer to
19 the command action -- the prescribed command, the actual
20 command. The reference is the command action value. You
21 haven't shown any connection to the two command
22 components (indicating).23 Q. So that's exactly what I was going to ask. So
24 looking at Exhibit 3004, without more information, can
25 you tell me whether this satisfies the elements of claim

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1 1 under the Court's claim construction?

2 A. No.

3 MR. ROSEN: Objection. Incomplete hypothetical.

4 Vague.

5 BY MR. JAFFE:

6 Q. What information would you need to determine
7 whether I've depicted -- what I've depicted in
8 Exhibit 3004 satisfies the claim 1 under the Court's
9 claim construction?10 MR. ROSEN: Objection. Vague. Incomplete
11 hypothetical.12 THE WITNESS: So the Court says: Each element
13 specifies at least one command action value for each
14 generic command component.15 So if you mean for this one to be shared by the
16 two of them (indicating), you would need some indication
17 in the picture that that's what you meant.

18 BY MR. JAFFE:

19 Q. And when you say "shared by the two of them,"
20 and I realize you're talking about my diagram?21 A. Informally, just -- that -- if you meant that
22 command action value to be the corresponding -- to be the
23 command action value for each of these (indicating), you
24 need some further depiction of that relationship.

25 Q. Okay. Now in an object-oriented system, if the

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1 object is holding all of these components within it,
2 including the generic command components and the
3 reference to the command action value or a reference to
4 the prescribed command, is that association enough to
5 satisfy what's in claim 1?6 MR. ROSEN: Objection. Vague. Compound.
7 Incomplete hypothetical.8 THE WITNESS: So, again thinking of Java, to
9 make this satisfy that limitation, you would need some
10 method, let's say, for connecting each of your two let's
11 call them string objects for the two command components,
12 you'd need some way to say "I'm on this one and I would
13 like its command action value," and that should get you
14 to the thing you've labeled "reference," and if you were
15 on the other one, udp, the thing you pulled out -- the
16 thing you next parsed out of the command was udp, you
17 would need another way, another way to -- a method,
18 probably the same method, just have different --
19 different arguments -- a way to get to the thing you've
20 labeled "reference."21 Q. Understood. So in your understanding of what's
22 required by claim 1, at some level there has to be a
23 one-to-one correspondence between these individual
24 generic command components and their separate command
25 action values. Is that fair?

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1 MR. ROSEN: Objection. Misstates testimony.
 2 Vague. Incomplete hypothetical.
 3 THE WITNESS: I -- I think that's actually too
 4 strict. One-to-one I don't think is required. You could
 5 have -- this is obviously two-to-one (indicating). And
 6 this would satisfy if -- once -- once you linked up the
 7 things as I -- as I mentioned in some way, this would
 8 satisfy the claim element.
 9 BY MR. JAFFE:
 10 Q. Fair. So what you're saying is it doesn't have
 11 to be one-to-one, but there has to at least be a
 12 one-to-one correspondence and it could be one-to-two or
 13 one-to-three or two-to-one or two-to-three? Is that
 14 fair?
 15 MR. ROSEN: Same objections.
 16 THE WITNESS: No. If you said one-to-three,
 17 that suggests to me one generic command would indicate
 18 three -- have three corresponding command action values,
 19 and I'm not sure that would even make sense.
 20 But if you had -- you could share one command
 21 action value between two command -- generic command
 22 components.
 23 BY MR. JAFFE:
 24 Q. But you are requiring at least a one-to-one
 25 correspondence in terms of generic command components and

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1 command action values, but there can be overlap in the
 2 command action values used?
 3 A. I --
 4 BY MR. JAFFE:
 5 Q. Is that right?
 6 MR. ROSEN: Same objections and asked and
 7 answered.
 8 THE WITNESS: I think I'm getting too mathy with
 9 the one-to-one. There just must be some way to connect a
 10 generic command component with its command action value,
 11 and if it was the same as the command action value
 12 from -- of one of its brother or sister generic command
 13 components, I think that would still satisfy the claim
 14 element.
 15 BY MR. JAFFE:
 16 Q. Your understanding, though, is this pair
 17 relationship has to be enforced. Do you agree with that?
 18 MR. ROSEN: Same objections.
 19 THE WITNESS: Just -- it seems the plain
 20 language of the claim and the construction, each element
 21 specifies at least one command action value for each
 22 generic command component.
 23 BY MR. JAFFE:
 24 Q. So your understanding is there has to be --
 25 under the Court's claim construction there has to be a

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1 distinct pair relationship for each generic command
 2 component. Is that fair?
 3 MR. ROSEN: Same objections.
 4 THE WITNESS: I think that's about right.
 5 BY MR. JAFFE:
 6 Q. Now, looking at Figure 2, is the element Root
 7 part of the command parse tree in Figure 2?
 8 A. Root is not an element, so no.
 9 Q. Why is Root not an element of the command parse
 10 tree?
 11 MR. ROSEN: Objection. Vague.
 12 THE WITNESS: The box with the word "Root" in it
 13 is a signpost that indicates which element of the command
 14 parse tree is the root.
 15 BY MR. JAFFE:
 16 Q. So the box labeled Root is not the root element
 17 itself?
 18 A. It identifies the root element.
 19 MR. ROSEN: Same objection.
 20 THE WITNESS: And that --
 21 It identifies the root element as being 24a.
 22 BY MR. JAFFE:
 23 Q. Can you have a generic command component that
 24 includes more than one word?
 25 MR. ROSEN: Objection. Vague. Incomplete

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1 hypothetical.
 2 THE WITNESS: I would need to look and see in
 3 the specification what there is about a component.
 4 BY MR. JAFFE:
 5 Q. Would you go ahead and do that.
 6 A. I'm ready for your question again.
 7 Q. Now that you've had the opportunity to review
 8 the patent specification in its entirety, can you tell me
 9 whether you can have a generic command component that
 10 includes more than one word?
 11 MR. ROSEN: Objection. Vague. Incomplete
 12 hypothetical.
 13 THE WITNESS: I would say no. I think the
 14 command component language in the -- so I discovered -- I
 15 didn't review the entire specification, although it may
 16 have seemed like it. The specification uses the word
 17 "word" for one space delimited component of a command. I
 18 think it -- in my -- in my reading, I did not see command
 19 component, I saw "command word" over and over, and yet in
 20 the claim it's a command component. And since they're
 21 talking about the same thing, I believe that command
 22 component in the claims is a synonym for command word in
 23 the specification.
 24 Q. Okay. We've been going I think around another
 25 hour. Dr. Clark, do you want to pause now or proceed a

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<p style="text-align: right;">Page 78</p> <p>1 little bit longer and then have lunch? Up to you.</p> <p>2 A. Define longer.</p> <p>3 Q. Twenty minutes?</p> <p>4 A. I can do 20.</p> <p>5 Q. Okay. I want to go back to your expert report.</p> <p>6 A little while ago we started with paragraph 74 on page</p> <p>7 27 of your expert report. You seem to be looking at the</p> <p>8 claim construction order.</p> <p>9 A. Do I? It doesn't have enough pages, that's one</p> <p>10 thing. Do you want me to go to a page?</p> <p>11 Q. Page 27, paragraph 74, please. Remember, we</p> <p>12 were discussing the sentence that says "To the extent</p> <p>13 Cisco reads" in paragraph 77?</p> <p>14 A. Yes.</p> <p>15 Q. The sentence reads: "To the extent Cisco</p> <p>16 reads this limitation as not requiring every</p> <p>17 single element of the tree to have a</p> <p>18 corresponding at least one command action value,</p> <p>19 it is my opinion that IOS 12 practiced this</p> <p>20 limitation for the reasons that follow."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. So in that sentence, your opinion is that to</p> <p>24 satisfy claim 1 you need to have at least one</p> <p>25 corresponding command action value. Is that right?</p>	<p style="text-align: right;">Page 80</p> <p>1 BY MR. JAFFE:</p> <p>2 Q. My question was a little bit different. Let me</p> <p>3 try one more time.</p> <p>4 Under the Court's -- under your understanding of</p> <p>5 the Court's claim construction properly read, do any of</p> <p>6 the references that you discussed in your report</p> <p>7 anticipate the asserted claims?</p> <p>8 MR. ROSEN: Objection. Asked and answered.</p> <p>9 THE WITNESS: So my opinion involves the</p> <p>10 competing readings of the claim construction. So the</p> <p>11 first part of my opinion is that since the command action</p> <p>12 value in my opinion is -- interpretation of the claim</p> <p>13 construction is required in every -- with every</p> <p>14 command -- command component, that is -- that is not seen</p> <p>15 in any of these references except that part two of my</p> <p>16 opinion is that under the Cisco interpretation it's seen</p> <p>17 in all of these references.</p> <p>18 BY MR. JAFFE:</p> <p>19 Q. Do you agree with Cisco's interpretation?</p> <p>20 A. So --</p> <p>21 MR. ROSEN: Objection. Vague.</p> <p>22 THE WITNESS: I do not.</p> <p>23 BY MR. JAFFE:</p> <p>24 Q. Okay. So I want to ask you about the opinions</p> <p>25 that you agree with based on your understanding of the</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. ROSEN: Objection. Misstates the document.</p> <p>2 THE WITNESS: So my reading of the Court's</p> <p>3 construction requires a command action value for each</p> <p>4 generic command component, but I understand that Cisco</p> <p>5 has an interpretation that does not require every single</p> <p>6 element to have a corresponding command action value, and</p> <p>7 if that were -- if that prevailed, then -- then this</p> <p>8 system would practice that claim element.</p> <p>9 BY MR. JAFFE:</p> <p>10 Q. Under your understanding of the Court's claim</p> <p>11 construction order, do any prior art references</p> <p>12 anticipate the asserted claims?</p> <p>13 A. I assume you mean any of my four.</p> <p>14 Q. That you're aware of.</p> <p>15 MR. ROSEN: Objection. Asked and answered.</p> <p>16 THE WITNESS: My reading of the claim</p> <p>17 construction order says that there should be a command</p> <p>18 action value in each element of the command parse tree</p> <p>19 going along with a command component, every one of those</p> <p>20 that's in an element of the command parse tree. But on</p> <p>21 the other hand, if -- if the Cisco interpretation</p> <p>22 prevails -- so, sorry, if the Cisco interpretation</p> <p>23 prevails, then all of these -- all of the references read</p> <p>24 on the -- I'm using legal lingo probably incorrectly.</p> <p>25 All of the references practice the -- the claim element.</p>	<p style="text-align: right;">Page 81</p> <p>1 claim construction order. Are you with me?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Under that understanding, do you have any</p> <p>4 opinions, sitting here today, that any prior art</p> <p>5 reference discussed in your reports anticipates the</p> <p>6 asserted claims of the '526 patent?</p> <p>7 MR. ROSEN: Objection. Asked and answered.</p> <p>8 THE WITNESS: Same answer. And it feels like</p> <p>9 you're asking for one half of my opinion on this, and I'd</p> <p>10 like to give both halves when I give my opinion.</p> <p>11 BY MR. JAFFE:</p> <p>12 Q. So the disconnect is I'm asking for your opinion</p> <p>13 as the prior -- claims are construed applied properly.</p> <p>14 Do you have an opinion under that interpretation of the</p> <p>15 claims?</p> <p>16 MR. ROSEN: Objection. Asked and answered.</p> <p>17 Vague.</p> <p>18 THE WITNESS: I have said that under my</p> <p>19 interpretation of the -- of the claim construction and</p> <p>20 the claim, these references lack a command action value</p> <p>21 in each and every element, but if that's not really</p> <p>22 required then they do practice that element of the</p> <p>23 patent.</p> <p>24 BY MR. JAFFE:</p> <p>25 Q. Have you ever reviewed Junos 4.0 source code?</p>

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<p style="text-align: right;">Page 86</p> <p>1 answered.</p> <p>2 THE WITNESS: Assuming I could have back the</p> <p>3 dec -- the constructions I used in that declaration, yes.</p> <p>4 BY MR. JAFFE:</p> <p>5 Q. That declaration was true and accurate</p> <p>6 description of your opinions at the time you signed it,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. Now, if you could turn to page 79 of --</p> <p>10 MR. ROSEN: Same objections to the previous</p> <p>11 question.</p> <p>12 BY MR. JAFFE:</p> <p>13 Q. -- your report.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see there's a diagram at the top of page</p> <p>16 79 of your opening expert report?</p> <p>17 A. Yes.</p> <p>18 Q. What does that diagram depict?</p> <p>19 A. It is a piece of the parse tree for</p> <p>20 Martinez-Guerra and for just one command.</p> <p>21 Q. What command is that?</p> <p>22 A. Delete a file.</p> <p>23 Q. Does the parse tree, the partial parse tree that</p> <p>24 you've depicted here on page 79, does that meet the</p> <p>25 Court's claim construction for claim 1?</p>	<p style="text-align: right;">Page 88</p> <p>1 matching command component was the last valid thing seen.</p> <p>2 Q. So why wouldn't -- actually, what's the Court's</p> <p>3 claim construction for command action value?</p> <p>4 A. A value that identifies a prescribed command.</p> <p>5 Q. And how is that different from the command</p> <p>6 action value interpretation that you used when you</p> <p>7 prepared your opinions for your opening expert report?</p> <p>8 A. I didn't regard that as requiring the command</p> <p>9 action value to be a prescribed -- to identify a</p> <p>10 prescribed command. I thought that throwing an error</p> <p>11 would be a perfectly good command action value.</p> <p>12 Q. In your opinion, an error does not identify a</p> <p>13 prescribed command? Is that right?</p> <p>14 MR. ROSEN: Objection. Vague. Misstates</p> <p>15 testimony. Incomplete hypothetical.</p> <p>16 THE WITNESS: I don't want to say that an error</p> <p>17 couldn't ever be a prescribed command, but in this case I</p> <p>18 don't think it is.</p> <p>19 BY MR. JAFFE:</p> <p>20 Q. And you've never expressed the opinion that the</p> <p>21 error reporting functionality identifies a prescribed</p> <p>22 command? Is that right?</p> <p>23 MR. ROSEN: Objection. Misstates testimony.</p> <p>24 THE WITNESS: I believe so, but would need to</p> <p>25 check.</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. ROSEN: Objection. Vague. Incomplete</p> <p>2 hypothetical. Compound.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. JAFFE:</p> <p>5 Q. Why not?</p> <p>6 A. Because the Court wanted the command action</p> <p>7 value -- value to -- what did they say? Command action</p> <p>8 value identifies a prescribed command, and "error" does</p> <p>9 not do that.</p> <p>10 Q. But your opinion as expressed in your report is</p> <p>11 that "error" does qualify as a command action value in</p> <p>12 Martinez-Guerra, isn't it?</p> <p>13 MR. ROSEN: Objection. Vague as to "report."</p> <p>14 THE WITNESS: Of course, I didn't have the</p> <p>15 Court's claim construction when this was done.</p> <p>16 I lost your question.</p> <p>17 BY MR. JAFFE:</p> <p>18 Q. Your opinion, as expressed in your opening</p> <p>19 invalidity report, is that the error functionality is a</p> <p>20 command action value in Martinez-Guerra; true?</p> <p>21 A. Yes, in light of the constructions that were --</p> <p>22 that I was considering at the time.</p> <p>23 Q. What construction were you considering for</p> <p>24 command action value at the time?</p> <p>25 A. A command that would be executed when the -- the</p>	<p style="text-align: right;">Page 89</p> <p>1 BY MR. JAFFE:</p> <p>2 Q. So it's possible you could have expressed that</p> <p>3 opinion and you just don't recall?</p> <p>4 A. Yes.</p> <p>5 Q. Let's turn to paragraph 225 of your report,</p> <p>6 please.</p> <p>7 MR. ROSEN: It's been an hour and 20 minutes.</p> <p>8 Would you like to break?</p> <p>9 MR. JAFFE: So we can -- as soon as we finish up</p> <p>10 with this series of questions.</p> <p>11 THE WITNESS: You're getting to a breaking</p> <p>12 point? I'm sorry, a break point?</p> <p>13 MR. JAFFE: Yes, as soon as I finish up with</p> <p>14 this series of questions.</p> <p>15 THE WITNESS: That would be fine.</p> <p>16 BY MR. JAFFE:</p> <p>17 Q. So you're looking at paragraph 225?</p> <p>18 A. Yes.</p> <p>19 Q. Do you see about midway through the page it</p> <p>20 says:</p> <p>21 "The instruction to return an error that</p> <p>22 results from inputting an invalid word or an</p> <p>23 incomplete sequence (e.g., inputting 'delete'</p> <p>24 without a target path name), or the translation</p> <p>25 function that results from inputting a complete</p>

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<p style="text-align: right;">Page 90</p> <p>1 and valid sequence of tokens (e.g., 2 'delete/usr/extract/testing') is what the '52 3 patent refers to as a command action value." 4 Do you see that? 5 A. Yes. 6 Q. Did I read that accurately into the record? 7 A. Yes. 8 Q. Do you stand by that opinion? 9 MR. ROSEN: Objection. Vague. Assumes facts. 10 THE WITNESS: I do not in view of the Court's 11 construction of command action value. 12 BY MR. JAFFE: 13 Q. What part of the Court's claim construction for 14 command action value changes whether error reporting 15 qualifies as a command action value? 16 MR. ROSEN: Objection. Asked and answered. 17 THE WITNESS: The part about identifying -- 18 identifying a prescribed command. 19 BY MR. JAFFE: 20 Q. Did you analyze the Martinez-Guerra reference 21 under Arista's proposed constructions? 22 A. I hope I did. Not well enough. 23 Q. What do you mean by that? 24 A. I read that Arista construction for elements 25 included the command action value is a piece of data that</p>	<p style="text-align: right;">Page 92</p> <p>1 identify a prescribed command. 2 Q. So I guess I'm confused here because you have 3 two elements that are drawn here on page 79, right? 4 A. Yes. 5 Q. And taking the first element, it has one generic 6 command component, right? 7 A. Yes. 8 Q. And one command action value. Correct? 9 A. Yes. 10 Q. The other element on this page has one generic 11 command component, right? 12 A. Yes. 13 Q. And one command action value. Right? 14 A. Yes. 15 Q. So wouldn't you agree that what you've drawn 16 here on page 79 of your report is a command parse tree 17 having elements such that each element specifies at least 18 one command action value for each generic command 19 component? 20 A. Yes. 21 MR. JAFFE: Okay. Why don't we take our lunch 22 break. 23 THE VIDEOGRAPHER: All right. This marks the 24 end of disc 2, volume I. The time is 12:03 p.m. and we 25 are off the record.</p>
<p style="text-align: right;">Page 91</p> <p>1 uniquely represents the prescribed command. 2 Q. And you opine that the limitation 1C was met 3 under Arista's proposed construction in your report, 4 right? 5 A. All right, let me... 6 I did. 7 Q. So under Arista's proposed construction of 8 command action value as a piece of data that uniquely 9 represents the prescribed command, the error reporting 10 functionality in Martinez-Guerra constitutes a command 11 action value in the opinion you expressed in your opening 12 expert report, correct? 13 A. Yes. 14 Q. Okay. So and then just a couple more questions 15 and then we can take our lunch break here. 16 Looking back at the figure on page 79 of your 17 report, does what's described in this figure on page 79 18 meet the Court's claim construction for claim 1 for the 19 command parse tree limitation? 20 MR. ROSEN: Objection. Asked and answered. 21 THE WITNESS: So it -- it does not, but under 22 the Cisco reading of that limitation, it does. 23 BY MR. JAFFE: 24 Q. Why does it not meet the limitation of claim 1? 25 A. The Court wanted command action value to</p>	<p style="text-align: right;">Page 93</p> <p>1 (Lunch recess from 12:03 to 1:05 p.m.) 2 THE VIDEOGRAPHER: All right. This is the start 3 of disc 3, volume I. The time is 1:05 p.m. and we are 4 back on the record. 5 BY MR. JAFFE: 6 Q. Welcome back. 7 A. Thanks for lunch. 8 Q. Before we went to lunch, one of the things we 9 spoke about this morning was paragraph 74 of your opening 10 expert report and, in particular, the second to last 11 sentence in that paragraph which starts by saying, quote: 12 "To the extent Cisco reads this limitation as not 13 requiring every single element of the tree to have a 14 corresponding at least one command action value," and 15 then it continues. Do you see? 16 A. Yes. 17 Q. Am I correct that the flip side of that sentence 18 is essentially if the limitation requires every single 19 element of the tree to have a corresponding at least one 20 command action value? 21 MR. ROSEN: Objection. Vague. 22 THE WITNESS: Not sure what flip side is. 23 BY MR. JAFFE: 24 Q. So the opposite of what you're saying, to the -- 25 that is, the thing that you are talking about is looking</p>

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1 whether every single element of the tree has a
 2 corresponding at least one command action value. Right?
 3 MR. ROSEN: Same objection.
 4 THE WITNESS: Yes.
 5 BY MR. JAFFE:
 6 Q. Okay. In your opinion, if the claim requires
 7 that every single element of the tree to have a
 8 corresponding at least one command action value, IOS 12
 9 does not anticipate or render obvious the asserted claims
 10 of the '526 patent; true?
 11 MR. ROSEN: Objection. Compound.
 12 THE WITNESS: So again I'll say that my opinion
 13 on this has two parts, and the first part is that under
 14 the Court's construction I do not think IOS 12 practices
 15 this particular limitation, but part two is that, well,
 16 that's my interpretation of the claim construction but
 17 there's this other interpretation of the claim
 18 construction, and under that IOS 12 does practice it.
 19 BY MR. JAFFE:
 20 Q. So my question is in the context of the opinions
 21 that you expressed in your invalidity report that was
 22 issued before the Court's claim construction --
 23 A. Okay.
 24 Q. -- order. In the opinions that you expressed in
 25 your report, would you agree that because IOS 12 does not

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1 satisfy the requirement that every single element of the
 2 tree has a corresponding at least one command action
 3 value, it doesn't anticipate or render obvious the
 4 asserted claims of the '526 patent?
 5 MR. ROSEN: Objection. Vague. Compound. Asked
 6 and answered.
 7 THE WITNESS: So that -- my interpretation of
 8 this limitation requires this presence of the command
 9 action value in every element, but that may not -- that's
 10 my interpretation, and there is this other interpretation
 11 under which it does.
 12 BY MR. JAFFE:
 13 Q. So I want to talk about under your
 14 interpretation. Your interpretation --
 15 A. I have to -- okay. Go ahead.
 16 Q. Under your interpretation, as the claims are
 17 properly read in your view, IOS 12 does not anticipate or
 18 render obvious the asserted claims of the '526 patent;
 19 true?
 20 MR. ROSEN: Same objections.
 21 THE WITNESS: I cannot separate my view of that
 22 from this contingency that there is a competing
 23 interpretation under which it would. It's -- I can't.
 24 BY MR. JAFFE:
 25 Q. Let's turn to -- and you say competing

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1 interpretation of what?
 2 MR. ROSEN: Objection. Vague.
 3 THE WITNESS: The limitation of 1C as not -- as
 4 requiring every single element to have a corresponding at
 5 least one command action value.
 6 BY MR. JAFFE:
 7 Q. Okay. Now for my next question I want you to
 8 assume that limitation 1D requires every single element
 9 of the tree to have a corresponding at least one command
 10 action value.
 11 A. 1D, did you say?
 12 Q. Yes.
 13 A. Okay.
 14 Q. If you assume that limitation 1D requires every
 15 single element of the tree to have a corresponding at
 16 least one command action value, you have no opinion that
 17 IOS 12 anticipates or renders obvious claim 1 of the '526
 18 patent; true?
 19 MR. ROSEN: Objection. Misstates prior
 20 testimony. Asked and answered. Vague.
 21 THE WITNESS: I guess it's hype -- you're
 22 proposing a hypothetical situation in which there was no
 23 other interpretation? No. Let me back up.
 24 You're proposing that the limitation is hard and
 25 fast and not interpreted in any other way. So if there

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1 were no -- if for some reason in some world there was
 2 only one interpretation of this limitation and that
 3 limitation -- that interpretation -- that would be the
 4 limitation I favor that every element have a command
 5 action -- whatever the language is, a corresponding at
 6 least one command action value, then IOS doesn't -- IOS
 7 12 doesn't have that, but that world is not the world
 8 we're in.
 9 MR. JAFFE: Can you repeat my question, please?
 10 (Question read as follows:
 11 "Q. If you assume that limitation 1D
 12 requires every single element of the tree to
 13 have a corresponding at least one command action
 14 value, you have no opinion that IOS 12
 15 anticipates or renders obvious claim 1 of the
 16 '526 patent; true?")
 17 THE WITNESS: I just --
 18 MR. ROSEN: Same objections.
 19 THE WITNESS: I would answer the same way. I
 20 can't divorce my... my opinion about that from the
 21 possibility that -- that the Cisco interpretation
 22 prevails, and under that...
 23 BY MR. JAFFE:
 24 Q. So even where you assume the caveat that you're
 25 including, you still won't admit the scope of your

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98 to 101

<p style="text-align: right;">Page 98</p> <p>1 opinions? I'm having trouble understanding --</p> <p>2 A. Wait. Assume the caveat --</p> <p>3 MR. ROSEN: Objection. Asked and answered.</p> <p>4 THE WITNESS: Assume the caveat?</p> <p>5 BY MR. JAFFE:</p> <p>6 Q. So your report says to the extent that --</p> <p>7 something. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What I'm asking you is assume that to that</p> <p>10 extent does not apply.</p> <p>11 A. Could I --</p> <p>12 MR. ROSEN: Objection.</p> <p>13 MR. JAFFE: So -- go ahead.</p> <p>14 MR. ROSEN: Objection. Argumentative. Asked</p> <p>15 and answered.</p> <p>16 THE WITNESS: So how about this: What if I</p> <p>17 changed that sentence to be: Cisco does not read this</p> <p>18 limitation as not requiring every single --</p> <p>19 BY MR. JAFFE:</p> <p>20 Q. I'm not asking you to opine on what Cisco --</p> <p>21 Cisco's views. I'm asking about your opinions as an</p> <p>22 expert. Do you understand that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Now, your report -- which you wrote,</p> <p>25 right?</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. ROSEN: Objection. Misstates prior</p> <p>2 testimony. Asked and answered.</p> <p>3 THE WITNESS: I might add that the limitation</p> <p>4 requires that and everybody agrees that it does.</p> <p>5 BY MR. JAFFE:</p> <p>6 Q. Is that a yes or a no? I'm not --</p> <p>7 MR. ROSEN: Objection. Asked and answered.</p> <p>8 THE WITNESS: It's not a complete yes. Or -- I</p> <p>9 forget whether we -- which -- whether we're negating</p> <p>10 something, but --</p> <p>11 BY MR. JAFFE:</p> <p>12 Q. Sir, why does your opinion regarding the scope</p> <p>13 of the claim depend on Cisco's views?</p> <p>14 A. My interpretation of the scope of the claim</p> <p>15 is -- is the one I favor, but I -- but I know that</p> <p>16 there's another interpretation abroad, and I want to</p> <p>17 address that in particular since, under my</p> <p>18 interpretation, this system does not practice this</p> <p>19 limitation but under the Cisco imp -- limitation it does.</p> <p>20 Q. And you're not willing to assume that your</p> <p>21 interpretation applies and answer questions on that</p> <p>22 basis?</p> <p>23 MR. ROSEN: Objection. Vague. Misstates</p> <p>24 testimony. Asked and answered.</p> <p>25 THE WITNESS: So if I assume that my</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Yes.</p> <p>2 Q. It says to the extent that Cisco does X. Do you</p> <p>3 see that?</p> <p>4 A. Um-hmm.</p> <p>5 Q. In paragraph 77.</p> <p>6 A. Yes, I see that.</p> <p>7 Q. I'm asking you to assume that the limitation</p> <p>8 does require every single element of the tree to have a</p> <p>9 corresponding at least one command action value. Do you</p> <p>10 understand that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. With that assumption, you have no</p> <p>13 validity opinions regarding IOS 12, right?</p> <p>14 A. If you --</p> <p>15 MR. ROSEN: Objection. Asked and answered.</p> <p>16 THE WITNESS: If you exclude the -- if you</p> <p>17 exclude the caveat, and I would say, you know, negate the</p> <p>18 caveat, say Cisco does not read this limitation as not</p> <p>19 requiring every -- then I wouldn't have a view on</p> <p>20 anticipation.</p> <p>21 BY MR. JAFFE:</p> <p>22 Q. So if limitation 1D requires every single</p> <p>23 element of the tree to have a corresponding at least one</p> <p>24 command action value, you have no validity opinions</p> <p>25 regarding IOS 12, right?</p>	<p style="text-align: right;">Page 101</p> <p>1 interpretation rules in every matter in this case, then</p> <p>2 that's where I'd be.</p> <p>3 BY MR. JAFFE:</p> <p>4 Q. Under your view of the claims, none of the prior</p> <p>5 art references that you've identified invalidate the</p> <p>6 asserted claims, right?</p> <p>7 MR. ROSEN: Objection. Argumentative. Asked</p> <p>8 and answered.</p> <p>9 THE WITNESS: If I assume that my interpretation</p> <p>10 prevails, then that's correct. That is, I'm assuming</p> <p>11 that there is no need for a caveat because that never</p> <p>12 occurs because everybody agrees. You've got to have a</p> <p>13 command action value.</p> <p>14 BY MR. JAFFE:</p> <p>15 Q. So under your -- your view of the claim language</p> <p>16 is that every single element of the tree has to have a</p> <p>17 corresponding at least one command action value. Right?</p> <p>18 MR. ROSEN: Objection. Asked and answered.</p> <p>19 Vague.</p> <p>20 THE WITNESS: That is my -- that is my view, but</p> <p>21 my opinion includes the caveat.</p> <p>22 BY MR. JAFFE:</p> <p>23 Q. What do you mean by "the caveat"?</p> <p>24 A. The "to the extent" caveat.</p> <p>25 Q. Okay. I don't think that makes any sense, but</p>

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<p style="text-align: right;">Page 102</p> <p>1 I'm going to move on.</p> <p>2 Let's go to limitation 1E.</p> <p>3 A. Yes.</p> <p>4 Q. What is the best match functionality in IOS 12?</p> <p>5 MR. ROSEN: Objection. Vague.</p> <p>6 THE WITNESS: The best match functionality in</p> <p>7 IOS 12 is the matching of all of the command -- generic</p> <p>8 command components to successful completion.</p> <p>9 BY MR. JAFFE:</p> <p>10 Q. Would it be fair to call that exact matching?</p> <p>11 MR. ROSEN: Objection. Vague.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. JAFFE:</p> <p>14 Q. Other than an exact match, you don't identify</p> <p>15 any other matching done in IOS 12 that satisfies this</p> <p>16 best match limitation, right?</p> <p>17 A. Right.</p> <p>18 Q. So if you just have exact matching, in your</p> <p>19 opinion, that's sufficient to practice the best match</p> <p>20 limitation, right?</p> <p>21 MR. ROSEN: Objection. Misstates testimony.</p> <p>22 THE WITNESS: I'm saying that this -- so ask</p> <p>23 again?</p> <p>24 BY MR. JAFFE:</p> <p>25 Q. If you just have exact matching like you do here</p>	<p style="text-align: right;">Page 104</p> <p>1 THE WITNESS: So the Court addressed this and</p> <p>2 proposed plain and ordinary meaning for best -- the best</p> <p>3 match functionality, and the Court went on to say that...</p> <p>4 that on page 12, starting around line 20: "First, the</p> <p>5 plain and ordinary meaning of the term accurately conveys</p> <p>6 that the validating step is not limited to valid commands</p> <p>7 but also includes situations involving invalid commands."</p> <p>8 So I interpret this to mean that -- that the</p> <p>9 plain meaning, the plain and ordinary meaning of best</p> <p>10 match means matching as many words as you can of the</p> <p>11 command even if you can't match all of the command -- all</p> <p>12 of them, and that behavior I have not shown in IOS 12.</p> <p>13 BY MR. JAFFE:</p> <p>14 Q. So in your opinion, IOS 12 doesn't meet the best</p> <p>15 match limitation under the Court's claim construction?</p> <p>16 MR. ROSEN: Objection. Misstates testimony.</p> <p>17 THE WITNESS: That is true.</p> <p>18 BY MR. JAFFE:</p> <p>19 Q. Okay. Let's talk about your opinions on the</p> <p>20 Audix system, the Definity Audix system I think you refer</p> <p>21 to it as.</p> <p>22 When was the first time you heard of this</p> <p>23 Definity Audix system?</p> <p>24 A. In the fall sometime of last year.</p> <p>25 Q. And that was in context of this litigation?</p>
<p style="text-align: right;">Page 103</p> <p>1 in IOS 12, in your opinion, that's sufficient to show and</p> <p>2 practice the best match limitation in claim 1 of the '526</p> <p>3 patent, right?</p> <p>4 MR. ROSEN: Same objection.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. JAFFE:</p> <p>7 Q. What happens if I type in an invalid command</p> <p>8 into IOS 12?</p> <p>9 A. I do not know, but I assume that -- that it</p> <p>10 wouldn't work.</p> <p>11 Q. Does that matter for your opinions?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 MR. ROSEN: Objection. Vague as to the previous</p> <p>15 question.</p> <p>16 THE WITNESS: I don't -- so the claim</p> <p>17 construction order went into this. May I talk about</p> <p>18 that?</p> <p>19 BY MR. JAFFE:</p> <p>20 Q. You can talk about whatever you want in response</p> <p>21 to my question. So my question is: If IOS 12 did not</p> <p>22 respond to invalid commands, does that affect your</p> <p>23 invalidity opinions?</p> <p>24 A. So if I look at --</p> <p>25 MR. ROSEN: Objection. Vague.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. I believe the context was -- it might have</p> <p>2 been -- yes. Either this litigation or the IPR.</p> <p>3 Q. Before you started work as an expert witness on</p> <p>4 this case, had you ever heard of the Lucent Avaya</p> <p>5 Definity Audix?</p> <p>6 A. No.</p> <p>7 Q. And I take it you've never used the Lucent Audix</p> <p>8 Definity Audix system, right?</p> <p>9 A. I've never used it as an administrator. I might</p> <p>10 have used it as a customer. I don't know.</p> <p>11 Q. Who picked the invalidity references that are</p> <p>12 found in your opening report?</p> <p>13 A. I helped choose them from a larger number that</p> <p>14 were offered.</p> <p>15 Q. Now, for the Definity Audix system, what is your</p> <p>16 basis to opine that this was released before the '526</p> <p>17 patent was filed?</p> <p>18 A. The existence of the manuals and the date of</p> <p>19 existence of the manuals.</p> <p>20 Q. Do you identify any other basis in your report</p> <p>21 to show that the Definity Audix system was released</p> <p>22 before the '526 patent was invented?</p> <p>23 MR. ROSEN: Objection. Vague.</p> <p>24 THE WITNESS: Just the dates on the manuals.</p> <p>25 //</p>

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<p style="text-align: right;">Page 106</p> <p>1 BY MR. JAFFE:</p> <p>2 Q. How do you know that what is described in these</p> <p>3 manuals describes how the actual Definity Audix system</p> <p>4 worked in 1999?</p> <p>5 A. I just believe them, I guess. I don't know why</p> <p>6 they would print -- they would make manuals for their</p> <p>7 system that didn't tell the truth. That would be pretty</p> <p>8 unusual.</p> <p>9 Q. You are relying on the Audix system as the prior</p> <p>10 art, not the manuals. Right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What evidence do you have that -- about</p> <p>13 that system other than the manuals?</p> <p>14 A. None.</p> <p>15 Q. Okay. When did the Definity Audix system go on</p> <p>16 sale?</p> <p>17 A. I do not know.</p> <p>18 Q. When was it released to the public?</p> <p>19 A. I do not know, although the dates on the manuals</p> <p>20 suggest around then.</p> <p>21 Q. With regard to the Definity Audix system, did</p> <p>22 you review any source code?</p> <p>23 A. No.</p> <p>24 Q. You've never seen the source code for the</p> <p>25 Definity Audix system, right?</p>	<p style="text-align: right;">Page 108</p> <p>1 A. So one example is the ping command. That would</p> <p>2 be a management program.</p> <p>3 Did you say for 1D?</p> <p>4 Q. B as in boy. Maybe I misspoke.</p> <p>5 A. No, I misheard. So ping is one.</p> <p>6 Q. Other than the ping command, you don't identify</p> <p>7 any other management programs for the Audix system,</p> <p>8 right?</p> <p>9 A. I don't identify a print management program, but</p> <p>10 I -- I suggest it at the end of... of paragraph 152.</p> <p>11 There's an example -- pardon my cough.</p> <p>12 There's an example of a generic command to</p> <p>13 print, and that would invoke a management program that</p> <p>14 knew something about the printers, though I didn't</p> <p>15 identify it by name.</p> <p>16 Q. You didn't identify the management program that</p> <p>17 works with the print display system parameters feature</p> <p>18 command?</p> <p>19 A. I didn't.</p> <p>20 Q. Right?</p> <p>21 A. I didn't.</p> <p>22 Q. Okay. In your opinion, the Unix ping command</p> <p>23 satisfies Cisco's proposed construction of management</p> <p>24 program, right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I didn't review it, so I didn't see it.</p> <p>2 Q. Okay. Let's turn to page 56 of your report,</p> <p>3 paragraph 155. Are all the commands in the Definity</p> <p>4 Audix system generic commands?</p> <p>5 MR. ROSEN: Objection. Vague.</p> <p>6 THE WITNESS: So confining ourselves --</p> <p>7 MR. ROSEN: And compound. Excuse me.</p> <p>8 THE WITNESS: Confining ourselves to what the --</p> <p>9 the -- so I'm trying not to answer for customers who</p> <p>10 might use commands to get their messages. We're not</p> <p>11 talking about that. We're talking about administrators</p> <p>12 using the system to manage the phone messaging.</p> <p>13 So those people -- for those people, I think all</p> <p>14 of these commands are generic commands. The commands in</p> <p>15 Table 1, Table 2.1 -- 2-1.</p> <p>16 BY MR. JAFFE:</p> <p>17 Q. Are you aware of commands for the Audix system</p> <p>18 other than the generic commands? I'm referring to CLI</p> <p>19 commands.</p> <p>20 MR. ROSEN: Objection. Vague.</p> <p>21 THE WITNESS: I am not.</p> <p>22 BY MR. JAFFE:</p> <p>23 Q. For the generic commands that you identify for</p> <p>24 limitation 1B, what are the management programs in the</p> <p>25 Audix system?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. So in your opinion, the ping command is a</p> <p>2 separate tool or external agent that has its own</p> <p>3 respective command format that provides management</p> <p>4 functions.</p> <p>5 A. Yes.</p> <p>6 Q. How does the command test lan dest address you</p> <p>7 talk about in paragraph 152 identify a prescribed</p> <p>8 command?</p> <p>9 A. Prescribed command... Well, one of the manuals</p> <p>10 says you type the command test lan dest address, and it</p> <p>11 performs the Unix ping command which attempts to send a</p> <p>12 packet, et cetera. So the manual is telling us that you</p> <p>13 type this and you get that.</p> <p>14 Q. Is that enough, in your opinion, to show that</p> <p>15 the test lan command is an abstraction of the command</p> <p>16 format for the ping command?</p> <p>17 MR. ROSEN: Objection. Vague.</p> <p>18 THE WITNESS: It is an abstraction of the</p> <p>19 ping -- the ping and other commands because the command</p> <p>20 test can be used for other purposes.</p> <p>21 BY MR. JAFFE:</p> <p>22 Q. Going back to our earlier conversation, in your</p> <p>23 opinion under the proper interpretation of the claims as</p> <p>24 construed by the Court, the Audix system does not</p> <p>25 anticipate or render obvious any of the asserted claims;</p>

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110 to 113

<p style="text-align: right;">Page 110</p> <p>1 true?</p> <p>2 A. So that is my view of the... of the correct</p> <p>3 reading of the claim constructions, but, again, there's</p> <p>4 another view of that, and if the Cisco view is --</p> <p>5 prevails, then this does practice the... the -- Audix</p> <p>6 does anticipate the... the two claims.</p> <p>7 Q. Where do you say that in your report?</p> <p>8 A. In 158.</p> <p>9 Q. So the caveat that you're referring to is to the</p> <p>10 extent that every single element of the tree has to have</p> <p>11 a corresponding at least one command action value?</p> <p>12 A. You're paraphrasing? You're not quoting?</p> <p>13 Q. Yeah.</p> <p>14 A. So paraphrase again?</p> <p>15 Q. Well, let me ask a different question. And so</p> <p>16 this is attempting to parallel the conversation that we</p> <p>17 had earlier, but if you assume that limitation 1C of</p> <p>18 claim 1 of the '526 patent requires every single element</p> <p>19 of the tree to have a corresponding at least one command</p> <p>20 action value, the Audix system does not anticipate and</p> <p>21 render obvious any asserted claim of the '526 patent,</p> <p>22 right?</p> <p>23 MR. ROSEN: Objection. Asked and answered.</p> <p>24 THE WITNESS: If I assume that and -- and there</p> <p>25 is no competition for that interpretation, then what you</p>	<p style="text-align: right;">Page 112</p> <p>1 more certain situation, namely, that I assume it and it's</p> <p>2 actually true, I'm right, there's no contest, if that's</p> <p>3 really true, then these do not invalidate or -- the</p> <p>4 patent.</p> <p>5 BY MR. JAFFE:</p> <p>6 Q. So is that a yes?</p> <p>7 MR. ROSEN: Same objections.</p> <p>8 THE WITNESS: It's what I said.</p> <p>9 MR. JAFFE: Can you read my last question back,</p> <p>10 please?</p> <p>11 (Question read as follows:</p> <p>12 "Q. If you assume that the asserted claims</p> <p>13 of the '526 patent require every single element</p> <p>14 of the tree to have a corresponding at least one</p> <p>15 command action value, none of the references</p> <p>16 that you've identified in your report anticipate</p> <p>17 or render obvious the asserted claims; true?")</p> <p>18 MR. ROSEN: Same objections.</p> <p>19 THE WITNESS: Am I asked that again?</p> <p>20 BY MR. JAFFE:</p> <p>21 Q. Yes.</p> <p>22 A. So yes, but I'd want the assumption strengthened</p> <p>23 to exclude competing interpretations that might win out.</p> <p>24 BY MR. JAFFE:</p> <p>25 Q. So maybe we're getting hung up on --</p>
<p style="text-align: right;">Page 111</p> <p>1 said is right.</p> <p>2 BY MR. JAFFE:</p> <p>3 Q. And is that generally true with all the prior</p> <p>4 art references that you analyzed in your expert report?</p> <p>5 MR. ROSEN: Objection. Asked and answered.</p> <p>6 Vague. Compound.</p> <p>7 THE WITNESS: So let me put the -- let me say it</p> <p>8 right. If I'm right, if my view of the interpretation of</p> <p>9 this claim language and the claim construction prevails,</p> <p>10 as in, no one contests it in all venues, if I assume all</p> <p>11 that, then none of the -- none of my four pieces of art</p> <p>12 are practiced by -- sorry, practice the patent.</p> <p>13 BY MR. JAFFE:</p> <p>14 Q. If you assume that the asserted claims of the</p> <p>15 '526 patent require every single element of the tree to</p> <p>16 have a corresponding at least one command action value,</p> <p>17 none of the references that you've identified in your</p> <p>18 report anticipate or render obvious the asserted claims;</p> <p>19 true?</p> <p>20 MR. ROSEN: Objection. Asked and answered.</p> <p>21 Vague.</p> <p>22 THE WITNESS: So in my last answer --</p> <p>23 MR. ROSEN: Compound.</p> <p>24 THE WITNESS: In my last answer, I just wanted</p> <p>25 to qualify the assumption to extend to some -- a somewhat</p>	<p style="text-align: right;">Page 113</p> <p>1 A. I think so.</p> <p>2 Q. -- what assuming means.</p> <p>3 A. Yeah. Maybe.</p> <p>4 Q. What is your understanding of when you assume</p> <p>5 something?</p> <p>6 A. So if -- if...</p> <p>7 MR. ROSEN: And I object to the question as</p> <p>8 vague.</p> <p>9 THE WITNESS: Yes, I've given you too hard a</p> <p>10 time. I think you -- you're -- assume is -- assume that</p> <p>11 it's really true, it's really -- assume X. Then what is</p> <p>12 a consequence of X? That -- I don't -- I don't need any</p> <p>13 contingencies.</p> <p>14 BY MR. JAFFE:</p> <p>15 Q. Okay. Let me try this again. If you assume</p> <p>16 that the asserted claims of the '526 patent require every</p> <p>17 single element of the tree to have a corresponding at</p> <p>18 least one command action value, none of the references</p> <p>19 that you've identified in your report anticipate or</p> <p>20 render obvious the asserted claims; true?</p> <p>21 MR. ROSEN: Objection. Asked and answered.</p> <p>22 Vague. Compound.</p> <p>23 THE WITNESS: Under that assumption, that is</p> <p>24 true.</p> <p>25 //</p>

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<p style="text-align: right;">Page 130</p> <p>1 It could be that there's a translator for every command</p> <p>2 key. Maybe that's likely, even. And I guess -- well, I</p> <p>3 wouldn't want to speculate. So it's just -- it's -- the</p> <p>4 language here is not that clear about what this thing</p> <p>5 does.</p> <p>6 BY MR. JAFFE:</p> <p>7 Q. The Court's claim construction order issued on</p> <p>8 June 15th, right?</p> <p>9 A. I believe you.</p> <p>10 Q. What date did you provide your rebuttal report?</p> <p>11 A. I forget.</p> <p>12 Q. Is that included in the binder sitting in front</p> <p>13 of you?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you want to look and see what date you</p> <p>16 provided your rebuttal report?</p> <p>17 A. Yes, I do. Signed on the 17th.</p> <p>18 Q. Did you apply the Court's claim constructions in</p> <p>19 your rebuttal report?</p> <p>20 A. Yes.</p> <p>21 Q. So you had sufficient time to consider the</p> <p>22 Court's claim construction opinions to opine under the</p> <p>23 Court's constructions in your rebuttal report, right?</p> <p>24 A. Yes.</p> <p>25 Q. You didn't discuss your validity opinions,</p>	<p style="text-align: right;">Page 132</p> <p>1 order, you don't have any invalidity opinions sitting</p> <p>2 here today under the Court's claim construction order,</p> <p>3 right?</p> <p>4 MR. ROSEN: Objection. Vague. Misstates prior</p> <p>5 testimony.</p> <p>6 THE WITNESS: I want to say if I'm right in my</p> <p>7 interpretation of the Court's claim constructions, then I</p> <p>8 don't.</p> <p>9 BY MR. JAFFE:</p> <p>10 Q. And when you're talking about your</p> <p>11 interpretation of the Court's claim construction, you're</p> <p>12 referring to the caveat in your expert report in</p> <p>13 paragraph 77? Is that right?</p> <p>14 A. I lost the front of the question.</p> <p>15 Q. When you're talking about your interpretation of</p> <p>16 the Court's claim construction, you're referring to the</p> <p>17 caveat that you expressed in paragraph 77 of your opening</p> <p>18 expert report; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. So to recap, if you assume that the Court's</p> <p>21 claim construction requires every single element of the</p> <p>22 tree to have a corresponding at least one command action</p> <p>23 value, under the Court's claim construction, you don't</p> <p>24 have any invalidity opinions, right?</p> <p>25 MR. ROSEN: Objection. Vague. Misstates prior</p>
<p style="text-align: right;">Page 131</p> <p>1 though, in your rebuttal report, right?</p> <p>2 A. Right.</p> <p>3 Q. Okay. Based on the discussion that we had</p> <p>4 today, is it fair to say that you don't actually have any</p> <p>5 invalidity opinions under the Court's constructions,</p> <p>6 sitting here today?</p> <p>7 MR. ROSEN: Objection. Misstates testimony.</p> <p>8 THE WITNESS: Could we use -- do the assume</p> <p>9 thing again? Not taking all the time as before, but can</p> <p>10 I assume that my interpretation of the Court's claim</p> <p>11 construction is correct?</p> <p>12 BY MR. JAFFE:</p> <p>13 Q. If you assume -- well, actually, I'm asking a</p> <p>14 little bit of a different question.</p> <p>15 In your expert report you expressed alternative</p> <p>16 opinions under Cisco's proposed construction and Arista's</p> <p>17 proposed constructions, right?</p> <p>18 A. Yes.</p> <p>19 Q. You didn't opine under the Court's constructions</p> <p>20 because those didn't exist yet. Right?</p> <p>21 A. Except where they -- they might have matched one</p> <p>22 of the other constructions or were extremely close.</p> <p>23 Q. Otherwise, yes?</p> <p>24 A. Otherwise, yes.</p> <p>25 Q. Now that we have the Court's claim construction</p>	<p style="text-align: right;">Page 133</p> <p>1 testimony. Compound.</p> <p>2 THE WITNESS: That is right.</p> <p>3 BY MR. JAFFE:</p> <p>4 Q. Okay. If you can turn back to the '526 patent,</p> <p>5 what are the management programs identified in the '526</p> <p>6 patent for the preferred embodiment?</p> <p>7 A. I read in column 3 management programs</p> <p>8 implemented, for example, by a different OAM, which is</p> <p>9 what, operation -- operating administration and</p> <p>10 monitoring tools, such as realtime monitoring, yes.</p> <p>11 Programs may be executed within the processor or</p> <p>12 externally as external agents using a prescribed</p> <p>13 application programming interface. So things like that.</p> <p>14 Things like operation -- operating administration and</p> <p>15 monitoring and realtime monitoring.</p> <p>16 Q. So why don't you turn to Part A of the appendix</p> <p>17 of the '526 patent.</p> <p>18 A. Okay.</p> <p>19 Q. Do you see the third row of the table under New</p> <p>20 Syntax, it says "watch acb globals"?</p> <p>21 A. I see two of those, actually.</p> <p>22 Q. For the first one that's in the third row, I</p> <p>23 was --</p> <p>24 A. There's one there and there's one -- I'm</p> <p>25 indicating two different watch acb globals.</p>


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<p style="text-align: right;">Page 150</p> <p>1 bottom of page 13?</p> <p>2 A. Yes.</p> <p>3 Q. Do you see the Court construed the entire phrase</p> <p>4 there?</p> <p>5 A. Yes.</p> <p>6 Q. Is that construction consistent with your</p> <p>7 understanding of the claim language?</p> <p>8 A. Yes.</p> <p>9 MR. JAFFE: I pass the witness.</p> <p>10 EXAMINATION</p> <p>11 BY MR. ROSEN:</p> <p>12 Q. Dr. Clark, I'd like to turn back to</p> <p>13 Exhibit 3003, the Court's claim construction order.</p> <p>14 A. Yes.</p> <p>15 Q. You did not have the claim construction order</p> <p>16 when you submitted your opening report on invalidity,</p> <p>17 correct?</p> <p>18 MR. JAFFE: Objection. Leading.</p> <p>19 THE WITNESS: I did not.</p> <p>20 BY MR. ROSEN:</p> <p>21 Q. Have you read the Court's claim construction</p> <p>22 order?</p> <p>23 A. Yes.</p> <p>24 Q. Now that you have the order, would it change any</p> <p>25 of your opinions in your report?</p>	<p style="text-align: right;">Page 152</p> <p>1 in paragraph 77 of your report regarding the properties</p> <p>2 of the claimed command parse tree. Let's turn to that</p> <p>3 paragraph.</p> <p>4 A. I have it.</p> <p>5 Q. What did you mean by this sentence starting with</p> <p>6 "To the extent"?</p> <p>7 MR. JAFFE: Objection. Leading.</p> <p>8 THE WITNESS: So I'm -- I was inspired --</p> <p>9 inspired.</p> <p>10 I learned that in its infringement contentions,</p> <p>11 Cisco appeared to read the limitation 1D as not requiring</p> <p>12 that the parse tree have elements each specifying at</p> <p>13 least one corresponding generic command component and a</p> <p>14 corresponding at least one command action value.</p> <p>15 BY MR. ROSEN:</p> <p>16 Q. What was your basis for including this caveat in</p> <p>17 your report?</p> <p>18 MR. JAFFE: Objection. Leading.</p> <p>19 THE WITNESS: I think I -- I just said it was --</p> <p>20 it was the... the apparent use of an alternate</p> <p>21 interpretation of that limitation in the infringement</p> <p>22 contingents.</p> <p>23 BY MR. ROSEN:</p> <p>24 Q. Sitting here today, do you still have that</p> <p>25 concern?</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I would say it would not change the opinions</p> <p>2 significantly, although I might adjust the language of</p> <p>3 the report to accommodate the... the text of the -- of</p> <p>4 the new constructions.</p> <p>5 MR. JAFFE: I'll object to the last question as</p> <p>6 beyond the scope of the direct.</p> <p>7 BY MR. ROSEN:</p> <p>8 Q. With regard to IOS 12, you testified earlier</p> <p>9 that the only type of best match functionality in that</p> <p>10 system is an exact match functionality. Is that right?</p> <p>11 A. I did testify that way.</p> <p>12 Q. Is there any other type of best match</p> <p>13 functionality in IOS 12?</p> <p>14 A. So I was looking for a paragraph. When I was</p> <p>15 responding to that question I was looking for a paragraph</p> <p>16 I remembered reviewing recently and somehow didn't find</p> <p>17 it. Let me see if I can find it again, which talks</p> <p>18 about -- that paragraph talks about either abbreviated</p> <p>19 commands or command completion.</p> <p>20 Q. I'll withdraw the question, Dr. Clark.</p> <p>21 A. I'm still -- I remember seeing this paragraph</p> <p>22 about abbreviated commands, but I cannot find it somehow.</p> <p>23 But right, you --</p> <p>24 Q. I'll ask a different question.</p> <p>25 We've talked many times today about the caveat</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. JAFFE: Objection. Leading.</p> <p>2 THE WITNESS: I -- I do. And it was -- that</p> <p>3 concern was cemented by my review of Dr. Jeffay's</p> <p>4 deposition transcript in which he adopted that reading,</p> <p>5 that not every element need specify at least one</p> <p>6 corresponding generic command component and a</p> <p>7 corresponding at least one command action value.</p> <p>8 MR. JAFFE: Object as beyond the scope of the</p> <p>9 direct.</p> <p>10 BY MR. ROSEN:</p> <p>11 Q. Dr. Clark, let's turn to paragraph 54 of your</p> <p>12 report.</p> <p>13 A. Yes.</p> <p>14 Q. Why did you include this paragraph in your</p> <p>15 report?</p> <p>16 MR. JAFFE: Objection. Leading.</p> <p>17 THE WITNESS: So here I'm addressing Cisco's</p> <p>18 reading of the best match limitation to be satisfied by</p> <p>19 what I call character-level matching and in command</p> <p>20 completion, so that one types a partial command and</p> <p>21 either gets -- gets -- well, different systems do it</p> <p>22 different ways, but if you have an unambiguous start to</p> <p>23 the command, that command gets executed without you</p> <p>24 having to type the rest, or sometimes you get a choice of</p> <p>25 possibilities or sometimes you type a question mark and</p>

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<p style="text-align: right;">Page 158</p> <p>1 document. Vague. Misstates prior testimony.</p> <p>2 THE WITNESS: So in that --</p> <p>3 MR. ROSEN: And asked and answered.</p> <p>4 THE WITNESS: In that region in the 80s</p> <p>5 paragraph, there -- I -- I neglected to include the</p> <p>6 command completion material.</p> <p>7 MR. JAFFE: No further questions. Is that a</p> <p>8 wrap?</p> <p>9 MR. ROSEN: That's it.</p> <p>10 THE VIDEOGRAPHER: All right. This concludes</p> <p>11 the recorded video deposition of Doug Clark in the matter</p> <p>12 of Cisco verse Arista, taken on July 6th, 2016. The time</p> <p>13 is 4:01 p.m. and we are off the record.</p> <p>14 THE REPORTER: A copy, Counsel?</p> <p>15 MR. KRISHNAN: Yes, please.</p> <p>16 MR. JAFFE: Standard order, whatever ours is.</p> <p>17</p> <p>18 (The deposition concluded at 4:01 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 160</p> <p style="text-align: center;">DEPOSITION ERRATA SHEET</p> <p>1</p> <p>2 Page No. _____ Line No. _____</p> <p>3 Change:</p> <p>4 _____</p> <p>5 Reason for Change:</p> <p>6 _____</p> <p>7 Page No. _____ Line No. _____</p> <p>8 Change:</p> <p>9 _____</p> <p>10 Reason for Change:</p> <p>11 _____</p> <p>12 Page No. _____ Line No. _____</p> <p>13 Change:</p> <p>14 _____</p> <p>15 Reason for Change:</p> <p>16 _____</p> <p>17 Page No. _____ Line No. _____</p> <p>18 Change:</p> <p>19 _____</p> <p>20 Reason for Change:</p> <p>21 _____</p> <p>22</p> <p>23</p> <p>24 _____</p> <p>25 DOUGLAS W. CLARK, Ph.D. _____ DATED</p>
<p style="text-align: right;">Page 159</p> <p style="text-align: center;">DECLARATION UNDER PENALTY OF PERJURY</p> <p>1</p> <p>2</p> <p>3 I, DOUGLAS W. CLARK, PH.D., do hereby certify</p> <p>4 under penalty of perjury that I have read the foregoing</p> <p>5 transcript of my deposition taken on July 6, 2016; that I</p> <p>6 have made such corrections as appear noted on the</p> <p>7 Deposition Errata Page, attached hereto, signed by me;</p> <p>8 that my testimony as contained herein, as corrected, is</p> <p>9 true and correct.</p> <p>10</p> <p>11 Dated on the _____ day of</p> <p>12 _____, 2016, at</p> <p>13 _____, California.</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 DOUGLAS W. CLARK, Ph.D.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 161</p> <p>1 STATE OF CALIFORNIA</p> <p>2 COUNTY OF SAN FRANCISCO</p> <p>3</p> <p>4 I, MARK W. BANTA, a Certified Shorthand</p> <p>5 Reporter, do hereby certify:</p> <p>6 That prior to being examined, the witness in</p> <p>7 the foregoing proceedings was by me duly affirmed to</p> <p>8 testify to the truth, the whole truth, and nothing but</p> <p>9 the truth;</p> <p>10 That said proceedings were taken before me at</p> <p>11 the time and place therein set forth and were taken down</p> <p>12 by me in shorthand and thereafter transcribed into</p> <p>13 typewriting under my direction and supervision;</p> <p>14 I further certify that I am neither counsel</p> <p>15 for, nor related to, any party to said proceedings, nor</p> <p>16 in any way interested in the outcome thereof.</p> <p>17 In witness whereof, I have hereunto subscribed</p> <p>18 my name.</p> <p>19 Dated: July 7, 2016</p> <p>20</p> <p>21 </p> <p>22</p> <p>23</p> <p>24 MARK W. BANTA</p> <p>25 CSR 6034, CRR</p>

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U.S. Legal Support, Inc.

44 Montgomery, Suite 550

San Francisco, CA 94104

415-362-4346

DOUGLAS W. CLARK, Ph.D.

c/o DAVID ROSEN

KEKER & VAN NEST, L.L.P.

633 Battery Street

San Francisco, California 94111-1809

Re: Cisco Systems, Inc. v. Arista Networks, Inc.

Date of Deposition: July 6, 2016

Dear Dr. Clark:

Please be advised that the original transcript of your deposition in the above-titled matter is now available for reading and signing. The transcript will be held in our office for 30 days and made available for your review. Please contact us at 415.362.4346 to arrange an appointment.

You may elect to waive signature of the original and review a copy of the transcript. If it is more convenient to review a copy, please contact your attorney to make arrangements. After completion of your review, notify our office via certified or registered mail of any changes made to your transcript.

Please be advised that we are unable to release the original transcript for review.

In the event you do not sign your deposition transcript within the 30-day period, it may be used with the full force and effect as though it had been read, corrected and signed.

Thank you,

U.S. Legal Support

Production Department

cc: All counsel

ERRATA SHEET

Cisco Systems, Inc. v. Arista Networks, Inc.
United States District Court for the Northern District of California
San Jose Division
Civil Action No. 4:14-cv-05344-BLF (PSG)

Witness Name: DOUGLAS W. CLARK

Deposition Date: July 6, 2016

Page	Line	Correction	Reason
7	22	“the” should be “a”	Error
8	1	“very unlikely” should be “a very likely”	Transcription Error
27	8	“in” should be “and”	Transcription Error
35	7	There should be opening quotation marks before “When”	Transcription Error
35	11	There should be closing quotation marks after “command.”	Transcription Error
63	18	“conform” should be “confirm”	Transcription Error
123	10	There should be opening quotation marks before “the command”	Transcription Error
123	12	There should be closing quotation marks after “resource”	Transcription Error
123	16	There should be opening quotation marks before “the issuing”	Transcription Error
123	18	There should be closing quotation marks after “key”	Transcription Error
129	25	“provoke” should be “provide”	Transcription Error
133	11	There should be opening quotation marks before “Programs”	Transcription Error
133	13	There should be closing quotation marks after “interface.”	Transcription Error

Page	Line	Correction	Reason
142	5	"inventor's" should be "inventors"	Transcription Error
145	5	"The command" should be "This command"; and there should be opening quotation marks before "This command"	Transcription Error
145	7	There should be closing quotation marks after "system."	Transcription Error
152	22	"contingents" should be "contentions"	Transcription Error
158	5	"paragraph" should be "paragraphs"	Transcription Error

Date: July 29, 2016

Signature

A handwritten signature in black ink, appearing to read "Jay M. Chiu", written in a cursive style.